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IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

NO. 79-5816

CHARLOTTE FIELDHOUSE and EDMUND FIELDHOUSE, Appellants,

v.

THE PUBLIC HEALTH TRUST OF DADE COUNTY, FLORIDA, an agency and instrumentality of Dade County, Florida, which operates Jackson Memorial Hospital, Appellee.

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

JURISDICTIONAL STATEMENT

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December 13, 1979

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JURISDICTIONAL STATEMENT

CHARLOTTE FIELDHOUSE and EDMUND FIELDHOUSE, appeal from the judgment of the Supreme Court of Florida affirming the judgment of the trial court that § 708.10, Fla. Stat., and the common law duty of a husband to support his wife incorporated therein, are not violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. These provisions, as interpreted by the courts of the State of Florida impose vicarious liability on a husband for the debts of of his wife by virtue of marriage, while in an identical situation, the wife is free of any liability for the debts of her husband. A scheme establishing discrimination on account of sex has thereby been created. Since the scheme fails to meet the standard of judicial scrutiny required by this Court to withstand an equal protection challenge under the Fourteenth Amendment, the decision by the Florida Supreme Court is erroneous and presents grounds for plenary review by this Court.

OPINIONS BELOW

The Order on Various Motions rendered on August 1, 1978, by the Circuit Court of Dade County, Florida, disposing of the motions raising the issue decided by the Supreme Court of Florida, is unreported. It is reproduced in the appendix, p. 1, infra.

The opinion of the Supreme Court of Florida, which appears in the appendix, pp. 4, 8, infra, is reported at 374 So.2d 476 (Fla. 1979) and 374 So.2d 478 (Fla. 1979).[1]

JURISDICTION

The judgment of the Supreme Court of Florida, upholding the constitutionality of the law attacked, was entered on June 14, 1979. See appendix, pp. 4, 8, infra. A motion for rehearing and clarification was entertained and denied on September 21, 1979. See appendix, pp. 10, 11, infra.

A notice of appeal was timely filed in the Supreme Court of Florida. See appendix, p. 12, infra.

This appeal is being docketed in this Court within ninety (90) days from the denial of rehearing below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

QUESTION PRESENTED

Whether § 708.10, Fla. Stat. and the common law duty of a husband to support his wife incorporated therein - which as interpreted by the Courts of the State of Florida,

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[1] Out of an abundance of lawerly caution, counsel for appellants took both an appeal and a petition for writ of certiorari to the Supreme Court of Florida, and the Court consolidated the two proceedings. Subsequently, the Court decided the case by appeal, denied the petition for writ of certiorari and vacated the order of consolidation.

impose vicarious liability on the husband for the debts of his wife incurred for "necessities," solely by virtue of the marriage, while there exists no reciprocal duty to support the husband on the part of the wife, and in an identical situation, the wife is free of any liability for the debts of her husband - are violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL PROVISION AND STATUTE

Fourteenth Amendment, United States Constitution

{N]or shall any state ... deny to any person within its jurisdiction the equal protection of the laws.

§ 708.10, Fla. Stat.

This law shall not be contrued as (1) Relieving a husband from any duty of supporting and maintaining his wife ... .

RAISING THE FEDERAL QUESTION

The Appellants raised the federal question at the earliest proper stage of these proceedings in their Amended Motion to Dismiss, stating that the common law duty to support and § 708.10, Fla. Stat.,

> "Imposes (sic.) upon a husband a legal obligation to provide and pay for medical necessaries incurred by his legal wife, while the wife has no such reciprocal legal obligation to provide and pay for such medical necessaries incurred by her legal husband. 2. Such a scheme constitutes an invidious discrimination without a rational basis on account of sex, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution." See appendix, p. 14, infra.

This Fourteenth Amendment claim was reiterated in Count II of Appellants' Counterclaim for declaratory relief (Paragraphs 30-32, and prayer for relief), see appendix, pp. 20,21, infra, as well as in their denial of the husband's liability

in their Answer, (Paragraph 7), and by raising this Fourteenth Amendment claim in their Second Affirmative Defense. See appendix, pp. 17, 18, infra.

This claim was specifically passed upon and rejected by the Circuit Court of Dade County, Florida, in its Order on Various Motions (see appendix, p. 1, infra), and on review by the Supreme Court of Florida. See appendix, pp. 4, 8, infra.

STATEMENT OF THE CASE

Appellee, THE PUBLIC HEALTH TRUST OF DADE COUNTY, FLORIDA, brought suit against Appellants, CHARLOTTE FIELDHOUSE, and her husband, EDMUND FIELDHOUSE, for nonpayment of a hospital bill. The Appellee, in its Complaint, claimed that Appellant, EDMUND FIELDHOUSE, was liable as a matter of law for necessary hospital services and supplies rendered to his wife based solely on his obligation to pay for the bills incurred by his wife by virtue of their marriage. See appendix, p. 23, infra.

Although Appellants admitted in their Answer that EDMUND FIELDHOUSE was and is the legal husband of Appellant, CHARLOTTE FIELDHOUSE, they challenged the constitutionality of Appellee's claim that the husband is obligated to pay for his wife's necessities in an action by the creditor against the husband, while there is no reciprocal legal responsibility of the wife to pay for the husband's necessities, and therefore no creditor action against the wife for necessities incurred by the husband.

The trial court, in its Order on Various Motions (see appendix, p. 1, infra), found the husband, EDMUND FIELDHOUSE, liable as a matter of law and rejected the claim of sex discrimination. On review, both by way of appeal and by way of petition for writ of certiorari, the Supreme Court of Florida affirmed the judgment of the Circuit Court of Dade County, Florida, upholding § 708.10, Fla. Stat., and the common law duty of a husband to support his wife. The instant appeal was then brought to this Court by Appellants FIELDHOUSE.

THE QUESTION IS SUBSTANTIAL

The question of whether a law imposing liability upon the husband for the debts of his wife, while in an identical situation, the wife is not liable for the debts of her husband, constitutes an invidious discrimination on account of sex, in violation of the equal protection guarantee of the Fourteenth Amendment, is a novel and substantial one.

It is novel because this Court has never considered the validity of the common law duty of a husband to support his wife, which is codified in § 708.10 and § 2.01,[2] Fla. Stat., under the equal protection clause.

The question is substantial because it runs counter to all of the sex discrimination cases decided by this Court. See, Reed v. Reed, 404 U.S. 71 (1971); Frontiero v. Richardson, 411 U.S. 677 (1973); Kahn v. Shevin, 416 U.S. 351 (1974); Schlesinger v. Ballard, 419 U.S. 498 (1975); Weinberger v. Weisenfeld, 420 U.S. 636 (1975); Stanton v. Stanton, 421 U.S. 7 (1975); Craig v. Boren, 429 U.S. 190 (1976); Califano v. Goldfarb, 430 U.S. 199 (1977); Califano v. Webster, 430 U.S. 313 (1977); Orr v. Orr, U.S. , 99 S.Ct. 1102, 59 L.Ed.2d 306 (1979).

Orr v. Orr, supra, the latest sex discrimination case in this Court, held that an Alabama law imposing alimony obligations on husbands, but not on wives, was in violation of the Equal Protection Clause of the Fourteenth Amendment. The State of Florida, in authorizing the imposition of liability for the debts of spouses on husbands, but not on wives, presents a case that is clearly analogous to the case presented in Orr v. Orr, supra.

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[2] Section 2.01, Fla. Stat., provides, "[t]he common and statute laws of England which are of a general and not a local nature ... down to the fourth day of July 1776, are declared to be of force in this state ... .

The fact that the classification expressly discriminates against men rather than women does not protect it from scrutiny. Craig v. Boren; supra; Orr v. Orr, supra.

And, since Reed v. Reed, supra, this Court has never sustained a classification scheme discriminating against men and favoring women unless it had the benign purpose of aiding women to rectify the effects of past discrimination. Kahn v. Shevin, supra, at 353; Califano v. Webster, supra, at 317.

On the other hand, the law also discriminates against women in that it makes the wife a greater burden on the marital unit by making her the agent or conduit of a liability which does not apply to the husband. And, since Reed v. Reed, supra, this Court has never upheld a classification scheme discriminating against women in favor of men.

Under either analysis, however, the law establishes a scheme that "provides that different treatment be accorded ... on the basis of ... sex; it thus establishes a classification subject to scrutiny under the Equal Protection Clause." Reed v. Reed, supra, at 75; see also Orr v. Orr, supra. And in order to withstand scrutiny under the Equal Protection Clause, "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives." Califano v. Webster, supra, at 316-317; see also Orr v. Orr, supra.

If the justification for the scheme attacked herein is the State's preference for an allocation of family responsibilities under which the wife plays a dependent role, the scheme must fall. The "old notion" that "generally it is the man's primary responsibility to provide a home and its essentials," can no longer justify a scheme that discriminates on the basis of gender. Stanton v. Stanton, supra, at 10; see also Orr v. Orr, supra. "No longer is the female destined solely for the

home and the rearing of the family, and only the male for the market place and world of ideas." Stanton v. Stanton, supra, at 14-15; see also Craig v. Boren, supra, at 198; Orr v. Orr, supra.

If, on the other hand, the purported justification for the scheme is that due to past economic discrimination, that husbands are in fact better able to pay the bills of their wives, then are wives able to pay for the bills of their husbands, using sex as a proxy for ability to pay, the question then becomes whether this sex-based classification is substantially related to the achievement of the benign objective of aiding spouses of the female gender. Kahn v. Shevin, supra, at 353; Califano v. Webster, supra, at 317.

We submit that the purported benign rational of benefiting and protecting married women is clearly erroneous. Upon examination it can be seen that married women not only do not benefit from the scheme involved herein, but, in fact, that it works to their detriment. It in no way benefits a married woman to give her creditor a direct action against her husband as well as herself. It endangers property held with him by the entireties that otherwise would be immune from claims of creditors. See First National Bank of Leesburg v. Hector Supply Company, 254 So.2d 777 (Fla. 1971); Winters v. Parks, 91 So.2d 649 (Fla. 1956); Meyer v. Faust, 83 So.2d 847 (Fla. 1955). It is the creditor who today, in fact, is the sole beneficiary of the scheme attacked because of the additional liability available to it.

The scheme is a hold-over from archaic times when under the common law a married woman was a legal non-entity who could not sue or be sued, who could not contract in her own name, and who merely acted as agent for her husband. Today, those common law disabilities suffered by married women have been eliminated, yet the scheme has persisted without examination by the Courts. See Firestone v. Firestone, 263 So.2d 223, 228 (Fla. 1972); Lewis v. Gauzens, 318 So.2d 174, 175 (Fla. 2d DCA 1975).

Prior to the enactment of the Dissolution of Marriage Act, in 1971 (Chapter 63 of the Florida Statutes), it could be argued that the husband's duty to support provided protection to the wife since the sole basis for an action for alimony unconnected with divorce, as well as the basis for awarding alimony in a divorce action, was the husband's common law duty to support. See, Naurison v. Naurison, 108 So.2d 510 (Fla. 3d DCA 1959), an action for alimony unconnected with divorce; Davies v. Davies, 113 So.2d 250 (Fla. 3d DCA 1959), an action for divorce in which the husband could not get alimony since the wife had no corresponding duty to support her husband.

However, with the enactment of the 1971 Dissolution of Marriage Act, this was changed. Today, either spouse may obtain alimony in a divorce action by statute (see §§ 61.071, 61.08, Fla. Stat.), or either spouse by statute (see § 61.09, Fla. Stat.) may petition the court for alimony without petitioning for dissolution of marriage.[3]

This not only reflects the recognition of the equality of women in marriage, but removes any need on the part of the wife for the continuance of the common law duty of the husband to support his wife. The sole party to benefit is the creditor of the wife because the duty to support has been interpreted to give the wife's creditor a direct action against the husband. See, Phillips v. Sanchez, 35 Fla. 187, 17 So. 363 (1895); Hatchell v. Hayes, 151 So.2d 855 (Fla. 1st DCA 1963); Holiday Hospital Ass'n v. Schwarz, 166 So.2d 493 (Fla. 2d DCA 1964); Winn-Dixie Stores, Inc. v. Holmes, 197 So.2d 19 (Fla. 1st DCA 1966); Correll v. Elkins, 195 So.2d 27 (Fla. 1st DCA 1967); Dixon v. Wright, 214 So.2d 787 (Fla. 4th DCA 1968); Vacaro v. Vacaro, 224 So.2d 742 (Fla. 3d DCA 1969). Further, it is rather tenuous reasoning,

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[3]This presents an anomaly. As the law of Florida now stands only a husband may be directly sued by a third party for medical bills that the wife incurred during the marriage; the wife may not be sued for the husband's bills incurred during the marriage. However, a wife may be ordered to pay her husband's medical bills directly to a third party as a part of an award of alimony.

to say the least, for the creditor to remain a third-party beneficiary of the duty to support when the wife's common law disabilities have been eliminated and she can be sued herself.

Nor can it legitimately be urged upon this Court that a sufficient justification for the scheme is that it enhances the credit of a married woman and thereby more readily induces medical providers to extend to her treatment and care. The Equal Credit Opportunity Act, 15 U.S.C. § 1691 et. seq., prohibits the consideration of sex or marital status in the extension of credit. 15 U.S.C. § 1691, provides that it is unlawful for any creditor to discriminate "on the basis of ... sex or marital status" and therefore such a justification for the scheme involved herein is unlawful and cannot stand.

Since no important governmental objectives are being served and the gender based classification scheme is not related to the achievement of any such objective, the Supreme Court of Florida erred in holding that the scheme withstands scrutiny under the Equal Protection Clause.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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Appellee.

APPELLEE'S MOTION TO DISMISS OR AFFIRM

Appellee in the above entitled case moves to dismiss and/or affirm on the grounds that the appeal presents a question which is so unsubstantial as not to need further argument.

THE QUESTION IS NOT SUBSTANTIAL

Appellant argues that the decision of FIELDHOUSE v. PUBLIC HEALTH TRUST OF DADE COUNTY, 374 So.2d 476 (Fla.1979), requires review because it permits existence of a scheme of discrimination in the State of Florida whereby husbands unfairly can be held responsible for the payment of bills arising out of medical necessities supplied to their spouses while no such responsibility can similarly be imposed on the wives. The fallacy of Appellant's argument, precisely, is his assumption that a wife may not be sued for her husband's medical bills incurred during the marriage. However, the statute under challenge, Florida Statute 708.10 merely states that the Florida Married Women's Property Act, Chapter 708, in its entirety shall not be construed as relieving a husband of any duty of supporting his wife and children he may otherwise have. Because the statute does not create a duty on the part of the husband for his wife, and does not relieve a wife of any duty which she may have to support her husband, it is not discriminatory in any fashion. It does not impose affirmative duties, rather it merely concerns itself with the ambit of the Married Women's Property Act and describes, in one instance, what the act does not do.

The Appellant can point to no Florida decision insulating a wife from an obligation to supply her husband with medical necessities should he have a need and should she be in a financial position to do so. On the contrary, the question on the merits of whether a wife could be sued for her husband's necessities is no longer open to possible contention because the propriety of such a suit has been so clearly established in the recent case of Orr v. Orr, _____U.S._____, 99 S.Ct. 1102, 59 L.Ed. 2d 306 (1979), as to absolutely foreclose further contention on the subject.

If, today, a statute would be necessary to invest men with the right to own or convey realty, to sue or be sued, to contract in his own name, then - it can be safely assumed - that statute would necessarily include a clause, similar to Section 708.10, indicating that the overall statute should not be construed so as to relieve a wife of any duty she may have to support her husband and family.

Additionally, no constitutional offense is presented by the fact that the wife's obligation to support her family, when she is financially able and the family has need, takes root in judicial rather than legislative fundament. After all, the husband's equivalent obligation, left unaffected by the statute now under challenge, was a product of judicial initiative. It is, as Appellant complains, a common law scheme.

In short, since the common law has evolved to the point where the support obligations of men and women are equal with respect to the marriage and to the family unit, the premise that a wife does not shoulder equal responsibility if she is in the position to do so is fallacious and cannot support, in any way, the Appellant's empty contention that husbands and wives in Florida are subject to unequal treatment in violation of the Fourteenth Amendment to the United States Constitution. The Appellee, therefore, respectfully submits that the issues raised by the Appellant are so unsubstantial as to create no real controversy and require no further argument on the subject.

WHEREFORE, upon the foregoing discussion and recitation of authority, the Appellee, PUBLIC HEALTH TRUST OF DADE COUNTY, FLORIDA, respectfully requests that this Honorable Court dismiss the appeal and/or affirm the decision of the Florida Supreme Court now under review.

Respectfully submitted this 16th day of January, 1980.

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By _____
ROBERT A. GINSBURG

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss or Affirm was mailed this 16th day of January, 1980 to: [illegible]STER C. WISOTSKY, ESQ., Legal Services of Greater Miami, Inc., Senior Citizens Law Center, 833 Sixth Street, Miami Beach, Florida 33139; BRIAN BRATTEBO, ESQ., 10th Floor, Southeast First National Bank Building, Miami, Florida 33131; MILTON ROBBINS, Assistant State Attorney, Room 600, 1351 N.W. 12th Street, Miami, Florida 33125, and JIM SMITH, Attorney General, State of Florida, Capitol Building, Tallahassee, Florida 32304.

By _____

LCW:jmh

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Appellee.

BRIEF IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS OR AFFIRM

Appellants FIELDHOUSE, pursuant to Rule 16(4) of the rules of this Court, file this brief in opposition to Appellee's Motion to Dismiss or Affirm.

In its Motion to Dismiss or Affirm, Appellee asserts that the common law of Florida has evolved to the point where the support obligations of men and women are equal with respect to the marriage and the family unit, and that Appellants can point to no Florida decision insulating a wife from a financial obligation to the marital unit equal to that of her husband.

This simply is not so. Cited in Appellants' Jurisdictional Statement is Davies v. Davies, 113 So.2d 250 (Fla. 3d DCA 1959). This case makes clear that the basis for an award of alimony was the common law obligation of a husband to support his wife. It therefore followed that since a wife has no common law duty to support her husband, the husband could not obtain an award of alimony.

There is a simple and straightforward reason why there is no additional decisional law to cite on the issue of a wife's insulation from financial obligations to her husband.

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It is that the common law concept of a married woman as a legal non-entity, entirely dependent upon her husband, who can neither sue nor be sued was absolutely fundamental, unquestioned and therefore unlitigated. The notion was that the husband and wife were one, and the husband was the one, the legal persona of the family unit.

And while the married women's Property Act has emancipated the female spouse, and the Constitution of Florida was changed in 1968 to include women as well as men in its equal protection guarantee, and this Court's precepts of constitutional adjudication on gender based discrimination have evolved, there is no Florida case law imposing an equal financial responsibility on wives with respect to creditors of their husbands.

It must be remembered that Appellee's count against the husband, and his legal obligation to it, is based on his common law duty to support his wife. Without that common law duty, no creditor action exists. And, it is patently clear that no equivalent reciprocal duty to support a husband has been imposed on wives by statute or case law in this state. Thus there is no creditor action against a wife, and Appellee can point to no Florida case holding a wife liable for her husband's bills on the basis of their marriage. The wife is therefore an agent or conduit of liability on the marital unit in situations where the husband is not.

As the Florida case law stands today, particularly after the Florida Supreme Court opinion in this case, the decisional law with respect to financial obligations between spouses for one another's debts remains unchanged from the days of the old common law, and is unequal on the basis of sex. Only if this Court reverses the Florida Supreme Court will this

inequality be remedied.

Respectfully submitted,

LEGAL SERVICES OF GREATER MIAMI, INC.

BY Lester C. Wisotsky

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